

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

|                            |   |                                     |
|----------------------------|---|-------------------------------------|
| CLARKE and REBECCA WIXON,  | ) |                                     |
|                            | ) |                                     |
| Plaintiff(s),              | ) | No. C 07-2361 JSW (BZ)              |
|                            | ) |                                     |
| v.                         | ) | <b>ORDER GRANTING IN PART AND</b>   |
|                            | ) | <b>DENYING IN PART DIRECTOR</b>     |
| WYNDHAM RESORT DEVELOPMENT | ) | <b>DEFENDANTS' MOTION TO COMPEL</b> |
| CORP., et al.,             | ) |                                     |
|                            | ) |                                     |
| Defendant(s).              | ) |                                     |
|                            | ) |                                     |

Defendants Hensley, Herrick, Fry, Henley, and McConnell ("defendants") have moved to compel plaintiffs to respond to four interrogatories. Having read all the papers submitted, I find no need for argument or a hearing. **IT IS ORDERED** that defendants' motion to compel is **DENIED** in part and **GRANTED** in part as follows:

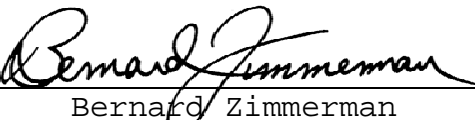
1. Plaintiffs' objections that Interrogatories 1(a), 2(a), 2(b), 3(a), 3(b), 4(a), and 4(b) are premature are **SUSTAINED**. Defendants have failed to show why the information sought in these interrogatories will assist them with their motion challenging plaintiffs' adequacy as Rule 23.1 representatives or why, given the competing demands on

1 plaintiffs' counsel, there is a legitimate need to have these  
 2 interrogatories answered at the present time. To the extent  
 3 the defendants seek information necessary for the purposes of  
 4 determining whether plaintiffs are adequate class  
 5 representatives, such information generally can be better  
 6 obtained via deposition.<sup>1</sup> If plaintiffs succeed on the Rule  
 7 23.1 motion, they shall answer these interrogatories within  
 8 sixty (60) days of the ruling.

9 2. Plaintiffs **SHALL** respond to interrogatories 1(b),  
 10 2(d), 3(d), and 4(d) concerning the specific types of damages  
 11 they have suffered by **April 17, 2009**.

12 3. Plaintiffs' objections to interrogatories 2(c), 3(c),  
 13 and 4(c) as seeking impermissible legal analysis are  
 14 **SUSTAINED**.

15 Dated: April 13, 2009

  
 \_\_\_\_\_  
 Bernard Zimmerman  
 United States Magistrate Judge

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22 <sup>1</sup> Among the elements that courts must evaluate in  
 23 considering whether a derivative plaintiff meets  
 24 representation requirements under Rule 23.1 are economic  
 25 antagonisms between representative and class; the remedy  
 26 sought by plaintiff in the derivative action; indications that  
 27 the plaintiff is not the driving force behind litigation;  
 28 plaintiff's unfamiliarity with the litigation; whether there  
 is other litigation pending between the plaintiff and the  
 defendant; the relative magnitude of the plaintiff's personal  
 interests as compared to his interest in derivative action  
 itself; the plaintiff's vindictiveness toward the defendant;  
 and, the degree of support the plaintiff is receiving from  
 shareholders he purports to represent. Larson v. Dumke, 900  
 F.2d 1363, 1367 (9th Cir. 1990); see also Davis v. Comed,  
Inc., 619 F.2d 588, 593 (6th Cir. 1980).